

May 11, 2023

The Public Service Commission convened in the Commission Hearing Room, State Capitol, Bismarck, North Dakota, on May 11, 2023, 10:02 a.m. Present were Commissioners Christmann, Haugen-Hoffart and Fedorchak.

Minutes

Mr. Christmann: I move the minutes of April 27, 2023, be approved.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-22-322  
Otter Tail Power Company  
Economic Development  
Rates

Mr. Christmann: I move the Commission adopt the Order on Protection of Information in Otter Tail Power Company, Economic Development, Rates, Case No. PU-22-322.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-21-424  
Dakota Natural Gas, LLC  
Natural Gas Facilities - Portland, ND -  
Traill Cnty  
Public Convenience & Necessity

Mr. Christmann: I move the Commission adopt the Order on the Protection of Information in Dakota Natural Gas, LLC, Natural Gas Facilities, Portland, ND, Traill County, Public Convenience & Necessity, Case No. PU-21-424.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-22-15  
Dakota Natural Gas, LLC  
Cost of Gas 2022  
Tariff Monthly Adjustments

Mr. Christmann: I move the Commission adopt the Order on Protection of Information in Dakota Natural Gas, LLC, Cost of Gas 2022, Tariff Monthly Adjustments, Case No. PU-22-015.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-23-166  
Public Service Commission  
Telecommunications Relay Service  
Misc. Case

Mr. Christmann: I move the Commission publish notice of the 2023-2024 Telecommunications Relay Service Surcharge in the daily newspapers of general circulation in the state of North Dakota in Public Service Commission, Telecommunications Relay Service, Miscellaneous Case, Case No. PU-23-166.

Ms. Fedorchak: I second the motion.

Roll Call: All voting "Aye."

Case No. DM-22-325  
Public Service Commission  
CenturyLink Communications, LLC  
Damage Prevention Enforcement

Withdrawn

Case No. PU-14-105  
Sunflower Wind Project, LLC  
Wind Energy Conversion Facility -  
Stark & Morton  
Siting Application

Ms. Fedorchak: I move the Commission adopt the Order on Consent Agreement in Sunflower Wind Project, LLC, Wind Energy Conversion Facility – Stark & Morton, Siting Application, Case No. PU-14-105.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Policy 1-21-78 (6)  
Conflicts, Gifts, and Ethics Reporting

Mr. Christmann: I move the Commission adopt Policy 1-21-78 (6), Conflicts, Gifts, and Ethics Reporting.

## **PUBLIC SERVICE COMMISSION**

### **CONFLICTS, GIFTS, AND ETHICS REPORTING**

POLICY 1-21-78 (6)

MAY 11, 2023

#### **A. PURPOSE**

To establish guidelines to govern relationships involving Commissioners, Commission employees, regulated entities, special interest groups, and parties to Commission proceedings.

#### **B. POLICY**

1. State laws concerning conflicts of interest are set forth primarily in Title 115 of the North Dakota Administrative Code; Chapters 12.1-12, 54-66, and 44-04 of the North Dakota Century Code; and Article XIV, Section 2 of the North Dakota Constitution. Employees are encouraged to review state law concerning conflicts of interest and must abide by them.
2. Employees who are involved with federal programs and funds must also be aware of and must abide by federal mandates concerning conflicts of interest. Employees who perform any function under the state's coal mining and reclamation laws, Chapter 38-14.1 of the North Dakota Century Code, must also comply with Chapter 69-05.2-02 of the North Dakota Administrative Code.
3. In the event of a conflict between Commission policy and State ethics laws, the ethics laws should be followed.

Policy 1-21-78 (6)  
Conflicts, Gifts, and Ethics Reporting  
Continued

**Gifts**

4. A Commissioner or Commission employee shall not knowingly accept a gift from a lobbyist or regulated entity in conjunction with efforts to affect or influence agency decisions, legislation, or administrative rules.
5. Commissioners, employees, or agents shall neither solicit nor accept gratuities, meals, favors, entertainment, loan, or anything of monetary value from anyone with an interest in the results of any agency action.

**Conflicts in Quasi-Judicial Proceedings**

6. When a commissioner, director, or other executives (hereinafter "Decisionmaker") of the Commission is called upon to perform a judicial act through a quasi-judicial proceeding, they must be diligent regarding potential conflicts and understand the reporting and ethics requirements.
7. Quasi-judicial proceedings do not include Commission hearings or portions of hearings where there are no pre-identified parties, only public input or comment is received, or the hearing is for quasi-legislative activities such as administrative rulemaking.
8. When a matter comes before a Decisionmaker in a quasi-judicial proceeding the person must disclose a potential conflict of interest.
  - a. A disclosure must:
    - i. Use the disclosure form provided by the Ethics Commission;
    - ii. Be provided to the parties in the proceeding or decision;
    - iii. Occur prior to the hearing and prior to making a substantive decision in a matter;
    - iv. Provide sufficient information concerning the potential conflict of interest or campaign monetary or in-kind support to put the public on notice of the material facts of the matter;
    - v. Be docketed and a copy provided to the ethics commission

Policy 1-21-78 (6)  
Conflicts, Gifts, and Ethics Reporting  
Continued

9. A potential conflict of interest, or campaign monetary or in-kind support, occurs when a commissioner, director, or other executive employees as part of their duties must make a determination or take action in a matter in which a person:
  - a. Received a gift from a party;
  - b. Has a significant financial interest in a party or outcome of a proceeding;
  - c. Has a relationship in a private capacity with one of the parties; or
  - d. Has received a campaign contribution of any kind or type, including cash, goods, services, or other forms of contribution for supporting election into office that may create a reasonable appearance of bias. This does not include campaign contributions below the reporting level set forth in Chapter 16.1-08.1 of the North Dakota Century Code.
10. Upon disclosure of a potential conflict of interest, the Decisionmaker:
  - a. Shall voluntarily recuse themselves from further involvement where the potential conflict of interest creates an appearance of bias to a reasonable person.
  - b. May continue to participate in a proceeding if all parties voluntarily consent or stipulate to the participation after disclosure of the potential conflict of interest.
  - c. May consult with or defer to a Neutral Reviewer to determine whether a potential conflict of interest creates an appearance of bias to a reasonable person.
11. The designated Neutral Reviewer for the Commission is:
  - a. The remaining members of the Commission that are not subject to the potential conflict of interest.
  - b. Upon request of the Commission, the Commission may designate an alternative Neutral Reviewer. The presumed alternative Neutral Reviewer is the Executive Secretary.

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Conflicts, Gifts, and Ethics Reporting  
Continued

12. In determining whether a potential conflict of interest creates an appearance of bias to a reasonable person, the Neutral Reviewer shall consider the following:
  - a. Whether the potential conflict of interest involves a party to the proceeding;
  - b. The issues involved in the quasi-judicial proceeding;
  - c. Other factors that are known to the decisionmaker that creates an appearance of bias to a reasonable person; and
  - d. When campaign contributions create a potential conflict of interest, the following additional factors should also be considered:
    - i. The size of the campaign contribution;
    - ii. The degree of involvement in the campaign; and
    - iii. Whether the campaign contribution is within the current or immediately preceding election cycle.
13. If a Commissioner is subject to recusal, the Commission may appoint a substitute as necessary for the furtherance of public business.
14. If a non-decisionmaking employee may have a potential conflict of interest, they shall disclose the potential conflict of interest to their immediate supervisor. The supervisor may direct the employee to limit or remove themselves from participation in the proceeding.


- (0) PSC Minutes, November 29, 1978
- (1) PSC Minutes, December 15, 1987
- (2) PSC Minutes, September 10, 1997
- (3) PSC Minutes, November 5, 1997
- (4) PSC Minutes, November 19, 1997
- (5) PSC Minutes, January 26, 2000
- (6) PSC Minutes, May 11, 2023

Ms. Haugen-Hoffart: I second the motion.  
Roll Call: All voting "Aye."

ATTEST

  
Executive Secretary

THE COMMISSION ADJOURNED AT 10:58 A.M.

  
RANDY CHRISTMANN, CHAIR